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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 LIZAMARIE RAYZBERG,

11 Plaintiff,

12 vs.

13 COUNTY OF LOS ANGELES, et al.,

14 Defendants.
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Case No. CV 23-2585-DMG (JCx)

**ORDER DENYING PLAINTIFF’S
EX PARTE APPLICATION TO
STRIKE DEFENDANTS’ REPLY
OR PERMIT A SUR-REPLY IN
OPPOSITION TO DEFENDANTS’
MOTION FOR SUMMARY
ADJUDICATION [55]**

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17 On April 9, 2024, Plaintiff filed an *Ex Parte* Application (“EPA”) to Strike
18 Defendants’ Reply or Permit a Sur-Reply in Opposition to Defendants’ Motion for
19 Summary Adjudication. [Doc. # 55.] Defendants oppose the EPA. [Doc. # 56.]

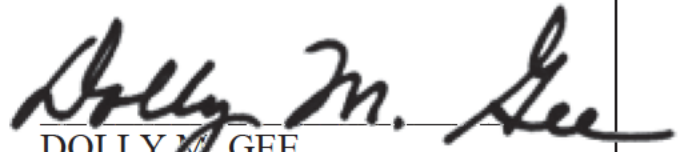
20 “Lawyers must understand that filing an *ex parte* motion . . . is the forensic
21 equivalent of standing in a crowded theater and shouting, ‘Fire!’ There had better
22 be a fire.” *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D.
23 Cal. 1995). Thus, to justify *ex parte* relief, an applicant must make two separate
24 showings. “First, the evidence must show that the moving party’s cause will be
irreparably prejudiced if the underlying motion is heard according to regular noticed

1 motion procedures. Second, it must be established that the moving party is without
2 fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as
3 a result of excusable neglect.” *Id.*

4 Here, no such emergency exists. It is well-established law that courts may
5 reply on the *Scott v. Harris* opinion in deciding summary judgment motions where
6 the relevant events are captured on video. *See Scott v. Harris*, 550 U.S. 372 (2007);
7 *see also Hughes v. Rodriguez*, 31 F.4th 1211, 1221 (9th Cir. 2022) (explaining “the
8 role of *Scott v. Harris*” in the summary judgment standard); *Rice v. Morehouse*, 989
9 F.3d 1112, 1120 (9th Cir. 2021) (citing *Scott v. Harris* in “Standard of Review”
10 section); *Vos v. City of Newport Beach*, 892 F.3d 1024, 1028 (9th Cir. 2018) (citing
11 *Scott v. Harris* in its explanation of factual background). This is not a new argument;
12 in fact, it is a key aspect of the relevant standard that Rayzberg could easily have
13 addressed in her Opposition. *Cf. Garcia v. Biter*, 195 F. Supp. 3d 1131, 1133–34
14 (E.D. Cal. 2016) (denying leave to file surreply where no new evidence or argument
15 is presented).

16 The Court therefore **DENIES** Plaintiff’s EPA.

17 DATED: April 10, 2024

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19 DOLLY M. GEE
20 Chief United States District Judge
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